

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr. Appeal No.505 of 1999

Reserved on : 25.5.2007

Date of decision: 29.5.2007

State of H.P.

Appellant.

Versus

Krishan Chand & others

Respondents.

Coram

The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting¹?

For the appellant:

**Mr.Ashutosh Burathoki,
Advocate General.**

Addl.

For the respondents:

Mr. Rakesh Jaswal, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the Appellant/State of Himachal Pradesh against the judgment of the Court of learned Addl. Chief Judicial Magistrate, Ghumarwin, District Bilaspur dated 30.7.1999 vide which, the respondents were acquitted of the charge under Sections 147, 325, 323 and 149 IPC.

Briefly stated, the facts of the case are that on 15.8.1995 at about 11.40 AM, a statement was made to the police by one Rattan Chand under Section 154 Cr.P.C. It was alleged by him that on the previous day one Krishan Chand, Savitri Devi his wife and his three daughters were putting a Danga ahead of his fields to divert the flow of water and when the complainant's father prevented them from doing so, they started giving beatings to his

¹Whether the reporters of Local Papers may be allowed to see the Judgment?

father. The complainant reached the spot and found that his father was blood stained and when his brother Chiranji came there to rescue them, the accused persons started giving beatings to him as well as to his brother with stones. He and his brother suffered injuries. On this report, a case was registered and after investigation challan was filed. The respondents were tried under the afore-mentioned Sections resulting in their acquittal.

I have heard Shri Ashutosh Burathoki, learned Additional Advocate General for the State and Shri Rakesh Jaswal, the learned counsel for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General were that the oral evidence led by the prosecution proved the nature of the injuries suffered by the accused persons. However, it was admitted by the learned Additional Advocate General that these injuries have not been corroborated by medical evidence since the Medical Officer was not examined before the trial Court. It was submitted that the ocular version given by the prosecution witnesses clearly proved the guilt of the accused persons and as such, the findings recorded by the learned trial Court can be said to be perverse calling for an interference by this Court.

On the other hand, the learned counsel for the respondents submitted that it is on record that two cases were registered in regard to this occurrence and the second case lodged by the accused persons against the complainant party also resulted in acquittal. It was submitted that it cannot be said from the evidence

as to who were the aggressors or that the accused persons were the aggressors. It was submitted that there is evidence to show that the accused persons also suffered injuries and one of the accused persons, namely, Sheela Devi remained admitted in the Hospital for 10 days which proved that she suffered serious injuries and once the injuries are suffered in exercise of right of private defence or in a free fight by both the parties, the guilt of the accused persons cannot be said to have been established beyond any reasonable doubt. It was submitted that the Medical Officer was not produced in Court in spite of sufficient opportunities having been given by the learned trial Court. Thus the medical evidence has not corroborated the ocular version, the guilt of the accused persons was not established beyond any reasonable doubt. It was submitted that the view taken by the learned trial Court cannot be said to be perverse and as such there is no merit in the appeal which deserves to be dismissed.

Coming to the evidence. PW-1 Ram Kali has stated that accused Krishan Chand diverted the flow of the water towards their fields which was objected to by her father-in-law Nikoo Ram. Accused Krishan Chand was accompanied by other accused persons who gave beatings to his father-in-law with stones and she went to the spot on hearing cries. She further stated that her **Jeth** (husbands elder brother) Chiranji reached the spot, before her while Rattan Chand reached later on and Chiranji was also given beatings when he tried to pick up her father-in-law and her **Jeth** also suffered injuries on his fore-head. Her husband reached there who was also beaten up by the accused persons with stones and

her father-in-law had suffered injuries who was taken to the hospital. She denied the suggestion that they diverted the flow of water towards the field of accused persons. She denied that accused Sheela remained admitted in the Hospital. However, she admitted that they are also facing trial in the Court in regard to this occurrence. She denied that they inflicted blow on the accused persons with stones, legs and fists and when the accused persons tried to save themselves, injuries were sustained by the complainant party.

PW Nikoo Ram corroborated this version. However, he denied that he had given a Danga towards the field of accused persons. He denied that they gave stone blows and these injuries were suffered by them. He denied his knowledge in case Sheela accused had remained admitted in the hospital. He denied that he suffered injuries by fall. However, he denied his knowledge as to how Rattan Lal suffered injuries and has not corroborated the statement of PW-1 Ram Kali that these were inflicted by the accused persons. PW-3 Chiranji Lal has stated that he went to the spot on hearing the cries and he went along with Ram Kali. He stated that accused Sheela gave a stone blow on the person of his father Nikoo who had fallen on the ground and the accused persons gave stone blows to him and he suffered injuries and became unconscious. He denied the suggestion that they had diverted the flow of water to the fields of accused persons by giving a Danga. He denied his knowledge as to why the accused persons were diverting the water towards their fields. He denied the suggestion that they inflicted stone blow on the persons of accused

party and Krishan Chand, Savitri and Kehru respondents suffered stone injuries.

PW-4 Rattan Chand stated about the injuries inflicted upon his father when he went there as he was also given beatings. He also stated about the injuries suffered by Chiranji and by him and that they took their father to the hospital. He denied that any Danga was given in the Nallah about which other witnesses have stated. He denied the suggestion that both the parties suffered injuries by throwing of stones or he suffered injuries by fall. He admitted that they are not on speaking terms with other party.

PW-5 Smt. Rodi Devi had gone to the spot and found that her husband was lying in the water while Chiranji Lal had suffered injuries on his person who was also lying on the ground. She admitted that she reached the spot last of all on hearing the cries and it is apparent that she had not seen the occurrence.

A perusal of the record of the case also shows that the Medical Officer was not examined in spite of several opportunities having been given and the evidence was closed by the order of the Court. Resultantly, the ocular version given by the witnesses which is quite contradictory has not been corroborated by medical evidence and in the absence of medical evidence, the charge under Sections 324 and 325 IPC cannot be said to have been substantiated by the prosecution evidence.

I have already observed as per order sheet dated 25th May, 2007 that the other case filed by the accused persons against the complainant party has resulted in acquittal and no appeal has been preferred against this order, which clearly shows that two

cross cases were registered as a result of the occurrence which took place.

PW-7 ASI Gian Chand admitted that there was a medical of Sheela Devi also who had remained admitted in the Hospital but he is not aware for how many days. Thus, the evidence led shows that one of the accused persons had also suffered injuries at that time and the possibility that it was a free fight cannot be ruled out. The learned trial Court has rightly observed that the evidence does not prove that the accused persons were aggressor in the occurrence. The view taken by the learned trial Court on the basis of the evidence and in the absence of the medical evidence cannot be said to be perverse calling for an interference by this Court. Therefore, there is no merit in the appeal filed by the appellant and as such the same is liable to be dismissed and is dismissed as such. Bail bonds furnished by the accused persons, if any, are discharged. The records be remitted to the Court below.

29th May, 2007
(SDS)

(V.K.Ahuja), J.